

**HOUSEHOLD CHEMICAL COLLECTION  
SERVICE AGREEMENT**

This HOUSEHOLD CHEMICAL COLLECTION SERVICE AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, between the VIRGINIA PENINSULAS PUBLIC SERVICE AUTHORITY, a political subdivision of the Commonwealth of Virginia formed under the Virginia Water and Sewer Authorities Act, VA. Code §15.1-1239 et seq. (the "Authority"), and the COUNTY OF YORK, a political subdivision of the Commonwealth of Virginia (the "Community").

**RECITALS**

A. The Authority was formed for the purpose of developing regional refuse collection, waste reduction and disposal alternatives with the ultimate goal of acquiring, financing, constructing and/or operating and maintaining a regional residential, commercial and industrial garbage and refuse collection and disposal system or systems.

B. The member jurisdictions of the Authority are the cities of Hampton, Poquoson and Williamsburg and the counties of Essex, James City, King and Queen, King William, Mathews, Middlesex and York.

C. The Community desires to retain the Authority as an independent contractor to provide Household Chemical Collection Services for the Community. The Community and the Authority are entering into this Agreement to set forth the rights, duties, and obligations of the parties with respect to the collection of household chemicals.

**AGREEMENT**

NOW, THEREFORE, the parties hereto hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

Unless otherwise defined, each capitalized term used in this Agreement shall have the meaning set forth below.

**Acceptable Materials:** Shall mean residential household maintenance products, automotive products, lawn and garden products, household cleaning products, paint related materials, waste fuels and solvents, small quantities of unknown materials (up to one gallon), and other miscellaneous household chemicals.

**Act:** Shall mean the Virginia Water and Sewer Authorities Act, Chapter 28, Title 15.1, Code of Virginia of 1950, as amended.

**Agreement for Household Chemical Collection Service:** Shall mean the agreement between the Authority and Clean Harbors Environmental Services, Inc. dated \_\_\_\_\_, 2002.

**Applicable Law:** Shall mean any law, regulation, requirement (including but not limited to permit and governmental approval requirements) or order of any local, state or federal agency, court or other governmental body, applicable from time to time to the performance of any obligations under any agreement entered into in connection herewith.

**Collection Sites:** Shall mean the locations throughout the service area where citizens will deliver Acceptable Materials. The Collection Site shall be the Authority's Composting Facility, or other sites as mutually agreed by the Authority and the Community.

**Disposal Costs:** Shall mean all costs paid by the Authority for the Household Chemical Collection Services provided by Clean Harbors Environmental Services, Inc. and costs for disposal of solid wastes at a Landfill.

**Disposal Fees:** Shall mean the amount payable by the Community to the Authority for disposal of Acceptable

Materials and solid waste.

**Fiscal Year:** Shall mean the period from July 1 of one year to June 30 of the next year.

**Household Chemical Collection Services:** Shall mean receipt and packaging of household chemicals by the Authority and transportation and disposal by Clean Harbors Environmental Services, Inc. for the term of the Agreement.

**Landfill:** Shall mean any landfill which the Authority has contracted for disposal.

**Operating Costs:** Shall mean all actual costs of the Authority properly allocable to providing Household Chemical Collection Services including, but not limited to:

- (1) salaries and fringe benefits of employees;
- (2) utilities, fuel, equipment (including but not limited to trucks and heavy equipment) tools and supplies;
- (3) engineering, testing, and consulting costs for design and operation, testing, and monitoring;
- (4) all costs for compliance with all permit conditions and compliance with Applicable Law;
- (5) legal costs incurred in connection with the zoning and permitting of Collection Sites and providing Household Chemical Collection Services.
- (6) Insurance costs and the costs of bonds, letters of credit, escrows or other financial assurance or allowance for environmental monitoring and assurance, or property value guarantees or for compliance with Applicable Law;
- (7) Capital Expenditures necessary for compliance with Applicable Law, Capital Expenditures necessary for normal maintenance and reasonable periodic

- expansion of the services to be provided to the Community and Capital Expenditures incurred in connection with Uncontrollable Circumstances;
- (8) purchase, lease or lease/purchase, and maintenance costs of equipment;
  - (9) all taxes, including but not limited to those on real property, equipment or income;
  - (10) all accounting and bookkeeping fees and charges;
  - (11) all collection costs;
  - (12) all costs for transportation and disposal of solid waste to a Landfill;
  - (13) all amounts required to fund any operating reserve or equipment replacement reserve fund created by the Authority; and
  - (14) overhead cost of the Authority allocated to this project by the Board of the Authority in accordance with the Authority's Articles of Incorporation and established policy.

**Operating Fee:** Shall mean the amount payable by the Community to the Authority for operating the Household Chemical Collection Services.

**Participating Community:** Shall mean the cities of Hampton, Poquoson and Williamsburg and the counties of James City and York.

**Start-Up Date:** Shall mean the mutually agreed date the services will be March 1, 2002.

**Unacceptable Materials:** Shall mean radioactive waste including smoke detectors; asbestos; explosives including gun powder, flares, ammunition; business or commercial waste; pressurized fire extinguishers, gas cylinders, and other pressurized containers; substances regulated by the

Drug Enforcement Agency; large quantities (over one gallon) of unknown materials.

**Uncontrollable Circumstance:** Shall mean any event or condition, whether affecting Clean Harbors Environmental Services, Inc., the Community, or the Authority, that interferes with the performance required hereunder, if such event or condition is beyond the reasonable control, and not the result of willful action of the party relying thereon as justification for any non-performance including but not limited to an act of God, storm, flood, landslide, earthquake, fire or other casualty, war, blockade, insurrection, riot, the order or judgment of any local, state, or federal court, administrative agency or governmental officer or body, a strike, lockout, or other similar labor action.

## **ARTICLE II**

### **TERM**

The term of this Agreement shall begin on the Start-Up Date and coincide with the Term of the Agreement for Household Chemical Collection Services.

## **ARTICLE III**

### **HOUSEHOLD CHEMICAL COLLECTION**

**Section 3.1. Authority as Service Provider:** The Community hereby retains the Authority to provide Household Chemical Collection Services, and the Authority hereby agrees to provide Household Chemical Collection Services in accordance with and subject to the terms and conditions of this Agreement and the Agreement for Household Chemical Collection Services.

**Section 3.2. Use of Contractor:** The Community and the Authority hereby agree that the Authority will use a contractor, Clean Harbors Environmental Services, Inc., to provide disposal

services.

**Section 3.3. Collection Site:** The Community and the Authority hereby agree that the Authority will use the Collection Site located on the Authority's Composting Facility to provide services described herein.

**Section 3.4. Acceptance and Disposal:** Beginning on the Start-Up Date and continuing throughout the term of this Agreement, the Authority agrees to provide Household Chemical Collection Services for all Acceptable Materials delivered to the Collection Sites in accordance with the terms of this Agreement and to provide for disposal of such Acceptable Materials delivered to and accepted by it in accordance with Applicable Law, unless an Uncontrollable Circumstance renders the Collection Site or Clean Harbor's facility or any significant portion thereof, inoperable. In such event, the Authority will use its best efforts to provide for acceptance and disposal of Acceptable Materials at an alternative facility, until the Collection Site or Clean Harbor's facility, is again operable. The Community retains title to Acceptable Material until such time as accepted by Clean Harbors.

**Section 3.5. Operating Rules:** The Authority shall adopt specific rules and procedures (the "Operating Rules") for the services not inconsistent with the terms of this Agreement and Community agrees to abide by such Operating Rules. The Authority may amend such rules and procedures from time to time. Copies of the Operating Rules shall be provided to the Community and posted at the Collection Sites. The parties acknowledge that the Operating Rules may include provisions for operating hours, emergency deliveries, inspections, on-site traffic controls, measurement of Acceptable Materials, fines for violations of the Operating Rules, the right to prohibit any person who violates the rules from using the Collection Sites and other matters

relating to the safe and efficient operation of the Collection Sites.

**Section 3.6. Use of Collection Sites by Other Communities:**

The Community agrees that users from the City of Poquoson may use the Collection Site. Other Participating Communities may use the Collection Site with the written approval of the Community. The Authority agrees to identify and record the community of origin for each user of the Collection Site.

**Section 3.7. Unacceptable Material:** The Authority shall never be deemed to have taken title to Unacceptable Material.

**Section 3.8. Disposal of Unacceptable Material:** The Authority will use its best efforts not to permit the unloading of Unacceptable Material at the Collection Sites and the Authority shall notify any person delivering Unacceptable Material to the Collection Sites that such Unacceptable Materials cannot be disposed of at the Collection Sites and that such person must promptly cause the Unacceptable Material to be removed from the Collection Sites and disposed of in accordance with Applicable Law. In the event that Unacceptable Materials are found at the Collection Site, the Authority shall make efforts to properly dispose of the Unacceptable Materials. The Communities using the Collection Site, however, shall be responsible for the actual costs and expenses of removing and disposing of such Unacceptable Material and for any fines, penalties, expenses or liabilities imposed on the Community or Authority resulting from the deposit of such Unacceptable Material at the Collection Sites; provided, however, the Community shall be given the opportunity to participate in and defend any action seeking to impose a fine, penalty or liability. If such Unacceptable Material can be identified as being delivered from one particular community, then that community shall be responsible for the actual costs and expenses as

described herein.

**Section 3.9. Operation and Maintenance:** The Authority shall operate and maintain the Collection Sites in accordance with Applicable Laws and shall furnish or cause to be furnished all labor, tools, utilities, and equipment necessary for the safe and efficient operation of the Collection Sites.

The Authority shall procure and install a household chemical collection container at the Collection Sites. The Authority shall provide training of all Authority employees who will provide the services. The Authority will provide all labor, tools, and equipment necessary to maintain the containers and associated equipment in good working condition.

**Section 3.10. Insurance:** Regarding the existence and operation of the Collection Site, the Authority will be named as an additional insured on the Community's general liability insurance. The Community agrees to waive the right of subrogation against the Authority in regard to any liability associated with existence and operation of the Collection Site.

#### **ARTICLE IV**

##### **PAYMENTS**

**Section 4.1. Annual Budget:** The Authority shall provide to the Community its annual budget for the Household Chemical Collection Services for each upcoming Fiscal Year ("Annual Budget") as part of the regular budget preparation for all Authority operations. The Annual Budget shall set forth the budgeted Operating Costs for such Fiscal Year, itemizing each category of expenditure and the method of allocating any item of expenditure applicable to more than one community. The Annual Budget shall also set forth the budgeted Disposal Costs for such Fiscal Year. The Authority shall also provide Operating Costs and Disposal Costs for the then current Fiscal Year. The Annual Budget for an upcoming Fiscal Year and any amendments thereto



shall not be effective and no expenditures shall be made by the Authority under the proposed Annual Budget unless and until such Annual Budget and any amendments have been approved by the Board of the Authority. The Authority shall continue operating within the expenditure levels approved under the Annual Budget for the immediately preceding Fiscal Year until such time as a new Annual Budget is approved.

**Section 4.2. Operating Fees:** The Authority shall charge the Community an annual Operating Fee in an amount equal to the budgeted annual Operating Costs for the Fiscal Year in question, payable in equal quarterly installments or as otherwise agreed between the Authority and the Community. If at any time during the Fiscal Year the Authority determines that actual Operating Costs will exceed Operating Fees, the Authority shall amend the Annual Budget to reflect such increase in Operating Costs and adjust the Operating Fees to cover such increase.

**Section 4.3. Disposal Fees:** The Authority shall charge the Community Disposal Fees in an amount equal to the actual Disposal Costs incurred and invoiced to the Authority in accordance with the Agreement for Household Chemical Collection Services. If more than one Community has delivered Acceptable Materials to the Collection Site over the invoice period, the Disposal Costs will be prorated to the Community based on the number of vehicles using the Collection Site during the invoice period.

If at any time during the Fiscal Year the Authority determines that actual Disposal Costs will exceed Disposal Fees, the Authority shall amend the Annual Budget to reflect such increases in Disposal Costs and adjust the Disposal Fees to cover such increases.

**Section 4.4. Payments:** The Authority shall invoice the Community in advance on a quarterly basis for an amount equal to one-quarter (1/4) of the estimated annual Operating and Disposal

Fees for the Fiscal Year payable hereunder. Such invoices shall be due and payable within thirty (30) days of receipt or as otherwise agreed between the Authority and the Community.

**Section 4.5. Nature of Payments:** Payments of Operating and Disposal Fees hereunder are payments by the Community for services rendered and the obligation to make such payments does not constitute a debt of the Community for purposes of constitutional, statutory or charter limitations.

The parties hereto acknowledge that the Board of Supervisors of the Community is not empowered to make any binding commitment to make the appropriations described herein in future fiscal years. Nothing herein is or shall be deemed to be a lending of the credit of the Community to the Authority, Clean Harbors Environmental Services, Inc., or to any other person or entity. Nothing herein contained shall be deemed to be a pledge of the faith and credit or the taxing power of the Community. Notwithstanding any other provision of this Agreement, nothing herein contained shall bind or obligate the Board of Supervisors of the Community to appropriate funds to the Authority for the purposes described herein nor shall any provision of this Agreement give the Authority, Clean Harbors Environmental Services, Inc., or any other person or entity any legal right to enforce the terms of this Article IV against the Community or the Board of Supervisors of the Community except for termination of this Agreement in accordance with Article VI hereof.

**Section 4.6. Annual Reports:** The Authority shall deliver to the Community, within 120 days of the end of the Fiscal Year, an annual report accompanied by a certificate from a certified public accountant setting forth a statement of actual Operating and Disposal Costs for the Fiscal Year and of Operating Fees and Disposal Fees received by the Authority and any excess or deficit of Operating and Disposal Fees over Operating and Disposal Costs.

If there is an excess of Operating Fees over Operating and Disposal Costs for the Fiscal Year, the Authority will apply that excess to the then current Fiscal Year's Operating or Disposal Costs. The Authority agrees to apply the Operating Fee solely to pay Operating Costs and the Disposal Fee to pay Disposal Costs, unless otherwise approved in advance by the Community. The Community shall be responsible for establishing and collecting whatever fees, if any, it determines to charge for the use of the Collection Sites.

**Section 4.7. Books and Records:** The Authority shall maintain all books, records and accounts necessary to record all matters affecting the Operating and Disposal Costs and Operating and Disposal Fees, or other amounts payable by or to the Community and the Authority under this Agreement. All such books, records and accounts shall be maintained in accordance with generally accepted accounting principles; shall accurately, fairly and in reasonable detail reflect all the Authority's dealings and transactions under this Agreement; and shall be sufficient to enable those dealings and transactions to be audited in accordance with generally accepted accounting principles. All such books, records and accounts shall be available for inspection and photocopying by the Participating Communities on reasonable notice so that they can verify Operating and Disposal Costs or other amounts payable under this Agreement. All such books, records and accounts shall be kept by the Authority for at least six years (or any longer period required by Applicable Law).

## **ARTICLE V**

### **ADDITIONAL AGREEMENTS**

**Section 5.1. Right of Access:** Representatives of the Community shall have reasonable access to the Collection Sites to monitor the Authority's compliance with the terms hereof.

**Section 5.2. Notification:** The Authority and the Community agree that either party shall promptly furnish to the other party a copy of any notice or order of any governmental authority asserting that the Household Chemical Collection operation is not in compliance with any Applicable Law.

**Section 5.3. Equal Opportunity:** During the performance of this contract, the Authority agrees as follows:

a. The Authority will not discriminate against any employee or applicant for employment because of age, disability, race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Authority. The Authority agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

b. The Authority, in all solicitations or advertisements for employees place by or on behalf of the Authority, will state that such Authority is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Authority will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **ARTICLE VI**

### **TERMINATION AND DEFAULTS**

**Section 6.1. Termination:** This Agreement may be terminated by either party hereto upon twelve (12) months prior written notice to the other. In the event of termination, the Community shall continue to make payments for Operating Fees and Disposal

Costs until the date of termination.

**Section 6.2. Defaults:** Each of the following shall constitute an Event of Default hereunder:

- a. Failure by the Community to pay any amount due hereunder when due;
- b. Breach by either party of any other term or condition hereof which breach is not remedied within thirty (30) days of the giving of notice of such breach by the non-defaulting party; provided, however, that if the defaulting party has commenced action to cure such default within such thirty (30)-day period and thereafter diligently pursues such cure to completion, such party shall not be deemed to have defaulted hereunder.

**Section 6.3. Remedies:** If an Event of Default by either party has occurred and is continuing, the non-defaulting party, in addition to any other remedies it may have at law or in equity, may immediately terminate this Agreement.

## **ARTICLE VII MISCELLANEOUS**

**Section 7.1. Entire Agreement; Amendments:** This Agreement represents the entire and integrated agreement between the Authority and the Community and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written agreement signed by the Authority and the Community.

**Section 7.2. Assignment:** No assignment of this Agreement, or any right occurring under this Agreement, shall be made in whole or partly by either party without the other party's express written consent.

**Section 7.3. Partnership:** Nothing herein shall be

construed to constitute a joint venture between the Authority and any Community or the formation of a partnership.

**Section 7.4. Severability of Invalid Provisions:** If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

**Section 7.5. Notices:** All notices, invoices, certificates, requests or other communications under this Agreement must be in writing and will be deemed given, unless otherwise required, when mailed by first-class mail, postage prepaid, to the address set forth below:

If to the Authority:

Virginia Peninsulas Public Service Authority  
Attention Executive Director  
300 McLaws Circle, Suite 200  
Williamsburg, Virginia 23185

If to the Community:

County of York  
Attention County Administrator  
P.O. Box 532  
Yorktown, Virginia 23690

The parties may by notice given under this Section, designate such other addresses as they may deem appropriate for the receipt of notices under this Agreement. If, by reason of the suspension of or irregularities in regular mail service, it is impractical to mail notice of any event when notice is required to be given, then any manner of giving notice which is satisfactory to the intended recipient will be deemed to be sufficient.

**Section 7.6. Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be signed as of the date above written.

ATTEST:

VIRGINIA PENINSULAS PUBLIC  
SERVICE AUTHORITY

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

COUNTY OF YORK

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_